

WILLIAM L. McCULLOUGH

IBLA 75-43

Decided November 27, 1974

Appeal from decision of Wyoming State Office, Bureau of Land Management, denying a petition to reinstate terminated oil and gas lease W-38067.

Affirmed.

1. Oil and Gas Leases: Reinstatement – Oil and Gas Leases: Rentals

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time can only be reinstated if the lessee shows that his failure to pay on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence. Reliance on an anticipated courtesy notice from the Bureau of Land Management, reliance upon the telegraph as an agent, and serious illness of a family member which is not shown to be a cause of such failure, are insufficient grounds for relief.

APPEARANCES: William L. McCullough, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

William L. McCullough has appealed from the decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting his petition to reinstate oil and gas lease W-38067.

The Act of July 29, 1954, 68 Stat. 585, amending section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188(b) (1970), provides that an oil and gas lease will terminate by operation of law if the annual rental is not paid on or before the anniversary date of the lease. Section 31 of the Mineral Leasing Act was further amended by the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188(c) (1970), to allow reinstatement of a terminated

lease upon a lessee's timely petition. The lessee, however, must show that the failure to pay on time "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." Id.

The rental payment due date was May 1, 1974, a Wednesday. The Wyoming State Office received appellant's payment, made by telegraphic money order, on May 2, 1974. <sup>1/</sup>

In his petition for reinstatement, appellant asserted that he relied on the BLM courtesy notice, which he did not realize until May 1 covered the lease at issue because it was for more than the sum due on lease W-38067. He asserts that on May 1, after he realized payment on lease W-38067 was due, he sent a telegraphic money order in payment. He learned on May 2 that the telegraph office in Cheyenne received the payment at 4:16 p.m. on May 1 and that it was not delivered until May 2.

[1] Appellant has not shown that he exercised reasonable diligence in transmitting payment. Reasonable diligence is only shown by facts indicating that the payment was made so that it would have been timely received in the ordinary course of transmittal, be it mail or telegraph. Inexo Oil Co., 15 IBLA 422 (1974); R. G. Price, 8 IBLA 290 (1972). Appellant has not asserted any delay or error in the transmittal of the telegram payment. As the payment was received in Cheyenne after the closing of the State Office, 43 CFR 1821.2-1(a), it could not have been delivered on time. Appellant has not shown that the failure to pay on time was not due to a lack of reasonable diligence.

Nor has appellant shown the failure to have been justifiable. This Board has held that reliance on receipt of or information in a courtesy notice does not justify failure to make timely payment. Louis J. Patla, 10 IBLA 127, 128 (1973). In his statement of reasons for appeal to this Board, he asserts as an extenuating circumstance the fact that his wife was in a serious accident. In the absence of a showing of some causal connection between the accident and appellant's late payment, the late payment was not "justifiable." Alfred B. Tyler, Executor, 13 IBLA 316 (1973); Kenneth F. Santor, 13 IBLA 208 (1973). We

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<sup>1/</sup> We note that the record does not contain a copy of the payment money order or the envelope in which it was delivered. However, no one controverts the fact that delivery of the order from the Cheyenne telegraph office to the Wyoming State Office, BLM, occurred May 2. Appellant asserts that he made payment at the telegraph office May 1.

can infer no such causality from appellant's petition for reinstatement, which did not contain any indication that his late payment was due to anything other than confusion over the courtesy notice he did receive.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman  
Administrative Judge

We concur.

Edward W. Stuebing  
Administrative Judge

Martin Ritvo  
Administrative Judge

